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C O N F I D E N T I A L SECTION 01 OF 02 ROME 001143

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TAGS: [PGOV](#) [PREL](#) [IT](#)  
SUBJECT: ITALY: CONSTITUTIONAL COURT REJECTS LAW GRANTING  
CRIMINAL IMMUNITY TO TOP OFFICIALS

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Classified By: CDA Elizabeth L. Dibble for reasons 1.4 (b) and (d).

11. (C/NF) SUMMARY: The Italian Constitutional Court declared unconstitutional a 2008 law granting temporary criminal immunity to PM Berlusconi and three other senior officials. The court's decision will allow several pending criminal cases against Berlusconi to proceed. Government spokesperson Paolo Bonaiuti called the ruling blatantly political and said Berlusconi's center-right government will finish its five-year mandate, "as decided by the Italian people." Berlusconi's response was more emotional as he lashed out against "communists" on the court and a media culture dominated by the left. Berlusconi also broke a political taboo by taking direct aim at President of the Republic Giorgio Napolitano whom he said was "elected by a leftist majority" and that we "know which side he is on." Berlusconi holds a solid majority in both chambers of parliament, and his government is not immediately threatened by this ruling. However, the decision has weakened him politically, and defending himself from criminal investigations could become a significant distraction. Berlusconi's harsh criticism of Napolitano also threatens further divisions between Berlusconi and the President of the Republic. END SUMMARY.

#### COURT RULES AGAINST LAW GRANTING IMMUNITY

12. (SBU) On October 8, Italy's Constitutional Court ruled nine to six that a 2008 law known as the "Lodo Alfano," which suspends criminal prosecutions against the top four institutional positions in the Italian state is unconstitutional. Declaring that the law violated constitutional guarantees of equality before the law, the decision will allow at least four criminal investigations against PM Silvio Berlusconi to proceed. The legal underpinnings of the ruling will also complicate any effort by Berlusconi's parliamentary majority to quickly pass a modified version of the Lodo Alfano--which is, itself, a modified version of a similar law previously rejected by the Constitutional Court.

#### BERLUSCONI LONG PLAGUED BY CRIMINAL INVESTIGATIONS

13. (SBU) Corruption and other criminal charges have plagued Berlusconi since he entered politics in 1994. Berlusconi says leftist prosecutors in a highly-independent judiciary are on a political witch-hunt, and he denies any guilt. Berlusconi has never been definitively convicted in a criminal case although several close associates have. To avoid a conviction in some cases, Berlusconi lawyers ran out the clock on the statute of limitations. In one case, a Berlusconi-controlled parliament reduced the statute of

limitations on the category of crimes for which Berlusconi was accused.

¶4. (C/NF) Italy's highly independent judiciary was a traditional refuge for communist party members during the Cold War. Moreover, the timing of judicial actions--including against some center-left officials--often appears political, including the October 5 decision by a civil court to rule against Berlusconi's Fininvest holding company on a long-pending Euro 750 million suit by a business competitor who claimed Fininvest's corruption of a judge cost it business opportunities. Whether guilty of corruption or not, Berlusconi's many supporters have traditionally shrugged off the allegations as irrelevant in the same way they have forgiven his frequent sexual transgressions and public gaffes.

BERLUSCONI ACCUSES THE COURT, THE PRESS AND THE PRESIDENT  
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¶5. (C/NF) Government spokesperson Paolo Bonaiuti called the ruling politically motivated and said Berlusconi's center-right government will finish its five-year mandate, "as decided by the Italian people." A visibly angered Berlusconi, speaking in an unusually shaky voice, responded emotionally to the verdict. He lashed out at the "red judges" on the Constitutional Court, and accused President of the Republic Giorgio Napolitano of "roots totally in the history of the left," saying Napolitano's recent appointment to the court proves "what side he is on." Berlusconi said 72 percent of the Italian press is controlled by the left (despite the fact he owns the lion's share of Italian media) and even criticized how variety shows often poke fun at the PM for his many sexual improprieties. Berlusconi continued that he "won't give up," and declared "Long live Italy! Long live Berlusconi!" Reflecting the mood among many in

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Berlusconi's party, one official told Poloff "this was a political coup d'etat conceived by entrenched powers opposed to Berlusconi."

THE OPPOSITION/SOME ALLIES CALL FOR CALM  
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¶6. (U) Though more radical parties have called for Berlusconi to resign, Democratic Party (PD) Secretary Dario Franceschini said he hoped Berlusconi would not waste time trying to pass another law designed only to protect himself and criticized Berlusconi for attacking Napolitano. Significantly, President of the Chamber of Deputies Gianfranco Fini, a Berlusconi ally and co-founder of the ruling party who has recently feuded with Berlusconi, also told Berlusconi to "respect the Constitutional Court and the Head of State."

COMMENT: BERLUSCONI WEAKENED BUT NOT DEFEATED  
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¶7. (C/NF) COMMENT: Berlusconi holds a solid majority in both chambers of parliament and is still popular with his political base. Moreover, the opposition Democratic Party is disorganized, and coalition dissidents are not strong enough to act against Berlusconi--as much as some would like to. As a result, though weakened, Berlusconi's government is not immediately threatened by the negative ruling. Although it is still too early to predict the ultimate impact of the decision and imminent criminal investigations, Berlusconi's emotional outburst against the well-respected President Napolitano is likely to resonate badly with many Italians and might lead to further divisions between the two institutions. And, as Berlusconi himself has said, defending himself against criminal investigations will distract him from the work of the Italian people. END COMMENT.  
DIBBLE